

## **REMARKS**

Claims 1-10, 12-13, 15-17 and 21-46 are pending.

Claims 1-10, 12-13, 15-17 and 21-46 are rejected.

### **Rejections Under 35 USC 112**

Claims 15 and 23 have been rejected for being indefinite. Claim 15 has been cancelled. Claim 23 has been amended to correct the antecedent basis. Applicant respectfully requests reconsideration and removal of the rejection of claims 15 and 23.

### **Rejections Under 35 USC 102**

Claims 1-2 and 4 are rejected under 35 USC 102(e) as being anticipated by USPN 6,905,335 to Fischer. Independent claim 1 has been amended to more particularly point out the Applicant's invention by including the features of the handle and the tips dimensioned for use by a child aged 1-4. The Fischer '335 patent is a kit for use by a dental hygienist and is not configured for self use by either an adult or a child with limited motor skills. Furthermore, the '355 patent does not teach a universal handle having a smaller diameter for manipulation by a child. Applicant respectfully requests reconsideration and removal of the rejection of claims 1-2 and 4 in light of the amendment to claim 1.

### **Rejections Under 35 USC 103**

Claims 1-6, 12, 28-29 and 31-32 are rejected under 35 USC 103(a) as being obvious over USPN 6,905,335 to Fischer in view of USPN 6,253,404 to Boland and Further in view of USPN

**5,765,252 to Carr.** Independent claim 1 has been amended to more particularly point out the Applicant's invention by including the features of the handle and the tips dimensioned for use by a child aged 1-4.

The Fischer '355 patent teaches a kit for use by a dental hygienist, not a kit configured for self cleaning. The replaceable tips 26 of the '355 patents are taught at column 4, line 50 as a "*means for noninvasively abrading a patient's tooth, a dental prosthesis, filling material, or other dental work is a low speed dental bur 26.*" The '355 patent does not form "a toothbrush" with replaceable tips as required by the Applicant's claim, but a bit for use in a dental drill.

The Boland '404 patent teaches different sized cleaning tips, but none of them are taught to be dimensioned to fit with the mouth of a child aged 1-4. Additionally, the toothbrush handle is not narrower in the middle and configured to be used by a child. The '404 patent is silent regarding the special needs of tooth care training in children.

The Carr '252 patent teaches the use of cleaning elements that can be placed on the fingertips to clean the teeth of a child. The '252 patent is silent regarding both replaceable tips and a toothbrush with replaceable tips.

The combination of the Fischer, Boland and Carr does not teach the Applicant's amended claim 1. Applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 1-6, 12, 28-29 and 31-32 in view of the arguments and amendment to claim 1.

**Claims 1-6, 12, 28-29, 31-32 and 34-35 are rejected under 35 USC 103(a) as being obvious over USPN 6,905,335 to Fischer in view of USPN 3,987,549 to Robertelli and further in view of USPN 5,765,252 to Carr.** Independent claim 1 has been amended to more particularly point out the Applicant's invention by including the features of the handle and that the replaceable

tips are dimensioned for use by a child aged 1-4.

The Fischer '355 patent teaches a kit for use by a dental hygienist, not a kit configured for self cleaning. The replaceable tips 26 of the '355 patents are dental burs for grinding teeth to remove plaque during a dental cleaning as discussed above, not compressible, flexible tips to make a training toothbrush that is appropriate for a child.

The Robertelli '549 patent discloses an electric toothbrush that is configured to be held by an adult, not a child and the handle taught fails to have a middle diameter smaller than the ends as claimed by the Applicant. The '549 patent discloses replaceable tips for different cleaning purposes, whereas the Applicant claims replaceable tips that are configured and dimensioned to be placed into a vestibule of children aged 1-4 years old. The tips of the '549 patent are not configured to fit within and clean the vestibule of children 1-4. The Carr '252 patent fails to teach the Applicant's handle and replaceable tips.

The combination of the Fischer, Robertelli and Carr patents does not teach the Applicant's amended claim 1. Applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 1-6, 12, 28-29, 31-32 and 34-35 in view of the arguments and amendment to claim 1.

**Claims 7-10 and 33 are rejected under 35 USC 103(a) as being obvious over USPN 6,905,335 to Fischer in view of USPN 6,253,404 to Boland in view of USPN 5,765,252 to Carr and further in view of USPN 4,406,032 to Diamant; OR Fischer, Robertelli and Carr as applied to claim 1 above and further in view of USPN 4,406,032 to Diamant.**

The examiner rejects claims 7-10 and 33 as obvious in view of the aforementioned references combined with the Diamant '032 patent. Claims 7-10 and 33 depends from allowable independent

claim 1 for the reasons discussed previously above. The Diamant '032 patent does not teach a handle having a narrower middle portion configured for children to grasp the toothbrush. Furthermore, the tips of the '032 patent are not replaceable, but fixed upon the end of the handle. Additionally, the tip of the '032 patent is not taught to be configured and sized for use by a child of age 1-4. Applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 4-10 and 33, which depend from allowable claim 1.

**Claims 13 and 23 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 1 above and further in view of USPN 6,612,770 to Aoyama OR Fischer, Robertelli and Carr as applied to claim 1 above and further in view of USPN 6,612,770 to Aoyama.**

Claims 13 and 23 depends from allowable independent claim 1 for the reasons discussed previously above. The Aoyama '770 patent is silent regarding the Applicant's claimed universal handle that has a narrower section in the middle to aid in a child gripping the toothbrush. The Aoyama '770 patent also does not teach to dimension and configure the tip end for use in a toothbrush for a 1-4 year old. Claims 13 and 23 are allowable because the combination of references fails to teach each and every element of the claimed invention. Applicant respectfully requests reconsideration and removal of the obviousness rejection of claims 13 and 23.

**Claim 15 is rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 1 above OR Fischer, Robertelli and Carr as applied to claim 1 above.**

Claim 15 has been cancelled. Applicant respectfully requests removal of the rejection in light of the cancellation of the claims.

**Claims 16-17 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland**

**and Carr as applied to claim 15 above and further in view of USPN 6,836,917 to Blaustein OR Fischer, Robertelli and Carr as applied to claim 15 above further in view of USPN 6,836,917 to Blaustein.**

Claims 16-17 are allowable for the above previously mentioned reasons. Claim 16 depends from allowable claim 1 and claim 17 has been cancelled. The Blaustien '917 patent teaches a handle that is necked down on the sides in the middle more than the ends, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The tip is not taught to be sized to fit within the vestibule of a child. In light of the failure of the '917 reference to address the shortcomings of the combination of references in teaching claim 1 and the cancellation of claim 17 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claims 16-17.

**Claims 21-22 and 27 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 1 above and further in view of USPN 6,745,427 to Trentz OR Fischer, Robertelli and Carr as applied to claim 1 above further in view of USPN 6,745,427 to Trentz .**

Claims 21-22 and 27 are allowable for the above previously mentioned reasons. Claims 21-22 and 27 depends from allowable claim 1. The Trentz '427 patent teaches a handle, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The tip is not taught to be sized to fit within the vestibule of a child. In light of the failure of the '427 reference to address the shortcomings of the combination of references in teaching claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claims 21-22 and 27.

**Claim 24 is rejected under 35 USC 103(a) as being obvious over Fischer, Boland and**

**Carr as applied to claim 1 above and further in view of USPN 6,000,410 to Tortorice OR Fischer, Robertelli and Carr as applied to claim 1 above further in view of USPN 6,000,410 to Tortorice.**

Claim 24 is allowable for the above previously mentioned reasons. Claim 24 depends from allowable claim 1. The Tortice '410 patent teaches a handle, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The tip is not taught to be sized to fit within the vestibule of a child. In light of the failure of the '410 reference to address the shortcomings of the combination of references in teaching claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claim 24.

**Claims 25-26 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 1 above and further in view of USPN 6,000,410 to Tortorice and USPN Application 2004/0161289 to Silberman OR Fischer, Robertelli and Carr as applied to claim 1 above further in view of USPN 6,000,410 to Tortorice and USPN Application 2004/0161289 to Silberman.**

Claim 25-26 are allowable for the above previously mentioned reasons. Claims 25-26 depend from allowable claim 1. The Tortice '410 patent teaches a handle, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The tip taught is not taught to be sized to fit within the vestibule of a child.

The Silberman '289 patent application teaches a handle, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The '289 patent application does not teach a tip sized to fit within the vestibule of a child. In light of the failure of the '410 reference and the '289 patent application to address the shortcomings of the combination of references in teaching claim

1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claims 25-26.

**Claim 30 is rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 29 above and further in view of USPN 5,392,482 to Drulias OR Fischer, Robertelli and Carr as applied to claim 29 above further in view of USPN 5,392,482 to Drulias.**

Claim 30 is allowable for the above previously mentioned reasons. Claim 30 depends from allowable claim 1. The Drulias '482 patent does not teach a handle. In light of the failure of the '482 reference to address the shortcomings of the combination of references in teaching claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claim 30.

**Claim 36 is rejected under 35 USC 103(a) as being obvious over Fischer, Robertelli and Carr as applied to claim 34 above further in view of USPN 6,253,404 to Boland.**

Claim 36 is allowable for the above previously mentioned reasons. Claim 36 depends from allowable claim 1. The Boland '404 patent does not teach a handle having a reduced diameter section in the middle. The '404 patent is silent regarding tips sized and configured for use by children aged 1-4 years old. In light of the failure of the '404 patent reference to address the shortcomings of the combination of references cited in teaching claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of dependent claim 36.

**Claim 37 is rejected under 35 USC 103(a) as being obvious over Fischer, Robertelli, Carr and Boland as applied to claim 35.**

Claim 37 is allowable for the above previously mentioned reasons. Claim 37 ultimately

depends from allowable claim 1. In light of the failure of the combination of references to teach each and every element of independent claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of dependent claim 37.

**Claim 38 is rejected under 35 USC 103(a) as being obvious over Fischer, Boland and Carr as applied to claim 21 above and further in view of USPN 5,706,545 to Yamada OR Fischer, Robertelli, and Carr as applied to claim 21 above and further in view of USPN 5,706,545 to Yamada.**

Claim 38 is allowable for the above previously mentioned reasons. Claim 38 ultimately depends from allowable claim 1. The Yamada '545 patent teaches a handle, but the diameter is not reduced nor is it taught to be dimensioned to be held by a child. The tip taught is not taught to be sized to fit within the vestibule of a child. In light of the failure of either of the combination of references to teach each and every element of independent claim 1 the applicant respectfully requests reconsideration and removal of the obviousness rejections of dependent claim 38.

**Claims 39-44 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland, Carr and Drulias.**

Claim 39 has been amended to more particularly point out what the Applicant considers to be the invention. Claims 40-44 depend from now allowable claim 39. Claim 39 has been amended to distinctly claim that the handle and the replaceable foam tips are dimensioned for use by a child.

The Fischer '355 patent teaches a kit for use by a dental hygienist, not a kit configured for self cleaning by either an adult or child. The replaceable tips 26 of the '355 patents are taught at column 4, line 50 as a "*means for noninvasively abrading a patient's tooth, a dental prosthesis, filling material, or other dental work is a low speed dental bur 26.*" The '355 patent does not form



“a toothbrush” with replaceable tips as required by the Applicant’s claim, but a bit for use in a dental drill. The “toothbrush” of the ‘355 patent is not configured to be held by a child. Furthermore, the ‘355 patent does not teach the use of a foam as required by independent claim 39.

The Boland ‘404 patent teaches different sized cleaning tips, but none of them are taught to be dimensioned to fit with the mouth of a child aged 1-4 nor are they made of foam. Additionally, the toothbrush handle is not narrower in the middle and configured to be used by a child. The ‘404 patent is silent regarding the special needs of tooth care training in children.

The Carr ‘252 patent teaches the use of cleaning elements that can be placed on the fingertips to clean the teeth of a child. The ‘252 patent is silent regarding both replaceable tips and a toothbrush with replaceable tips being made of foam to prevent injury or startling of children during initial training.

The Drulias ‘482 patent does not teach a removable tip attached to a handle. The toothbrush that is disposed over the sleeve are not suitable for toddlers and are NOT made of foam as claimed by the Applicant. In light of the failure of either of the combination of references to teach each and every element of independent claim 39 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claim 39 and dependent claims 40-44.

**Claims 39-43 are rejected under 35 USC 103(a) as being obvious over Fischer, Robertelli, Carr and Drulias.**

Claim 39 has been amended to more particularly point out what the Applicant considers to be the invention. Claims 40-43 depend from now allowable claim 39. Claim 39 has been amended to distinctly claim that the handle and the replaceable foam tips are dimensioned for use by a child.

The Fischer ‘355 patent teaches a kit for use by a dental hygienist, not a kit configured for

self cleaning by either an adult or child. The replaceable tips 26 of the '355 patents are taught at column 4, line 50 as a *“means for noninvasively abrading a patient's tooth, a dental prosthesis, filling material, or other dental work is a low speed dental bur 26.”* The '355 patent does not form “a toothbrush” with replaceable tips as required by the Applicant's claim, but a bit for use in a dental drill. The “toothbrush” of the '355 patent is not configured to be held by a child. Furthermore, the '355 patent does not teach the use of a foam as required by independent claim 39.

The Robertelli '549 patent discloses an electric toothbrush that is configured to be held by an adult, not a child and the handle taught fails to have a middle **diameter** smaller than the ends as claimed by the Applicant. The '549 patent discloses replaceable tips for different cleaning purposes, whereas the Applicant claims replaceable tips that are configured and dimensioned to be placed into a vestibule of children aged 1-4 years old. The tips of the '549 patent are not configured to fit within and clean the vestibule of children 1-4.

The Carr '252 patent teaches the use of cleaning elements that can be placed on the fingertips to clean the teeth of a child. The '252 patent is silent regarding both replaceable tips and a toothbrush with replaceable tips being made of foam to prevent injury or startling of children during initial training.

The Drulias '482 patent does not teach a removable tip attached to a handle. The toothbrush that is disposed over the sleeve are not suitable for toddlers and are NOT made of foam as claimed by the Applicant only the collar 34 is made of foam and it is NOT the cleaning surface.

In *Panduit Corp. v. Dennison Mfg. Co.*, 1 USPQ2d 1593, 1595-96 (Fed. Cir.) *Cert. denied*, 481 U.S. 1052 (1987), the Federal Circuit held:

*In making the assessment of differences, section 103 specifically requires consideration of the claimed invention “as a whole.” Inventions typically are new combinations of existing principals*

*or features . . . . The “as a whole” instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. Section 103 precludes this hindsight discounting of the value of new combinations by requiring assessment of the invention as a whole.”*

The combination of references fails to teach the claimed combination and are merely single elements that fails to motivate one skilled in the art to produce the invention. In light of the failure of either of the combination of references to teach each and every element of independent claim 39 the applicant respectfully requests reconsideration and removal of the obviousness rejections of claim 39 and dependent claims 40-43.

**Claims 45-46 are rejected under 35 USC 103(a) as being obvious over Fischer, Boland, Carr and Drulias as applied to claim 44 above and further in view of US Publication 2002/0008047 to Hammond OR Fischer, Robertelli, Carr and Drulias as applied to claim 44 above and further in view of US Publication 2002/0008047 to Hammond.**

Claims 45-46 depend from independent claim 39, which is allowed over the cited art. The Hammond publication in combination with the previously discussed art still fails to teach each and every feature of the claimed invention. In light of the failure to teach each and every element of independent claim 39 the Applicant respectfully requests reconsideration and removal of the obviousness rejections of dependent claims 45-46.

**CONCLUSION**

Favorable action constituting allowance is solicited. Commissioner is hereby authorized to charge payment of any fees due with this communication or credit any overpayment to Deposit Account No. 19-0513.

Respectfully submitted,

Date: February 19, 2007

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